

MEETING
STATE OF CALIFORNIA
SECRETARY OF STATE
VOTING SYSTEMS AND PROCEDURES PANEL

SECRETARY OF STATE
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AUDITORIUM
SACRAMENTO, CALIFORNIA

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TIFFANY C. KRAFT, CSR, RPR
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Mr. Mark Kyle, Chairperson

Mr. Marc Carrell

Ms. Caren Daniels-Meade

Mr. David Jefferson

Mr. Lee Kercher

Mr. Tony Miller

Mr. John Mott-Smith

STAFF

Mr. Stephen Stuart, Staff Counsel

Mr. Michael Wagaman, Elections Analyst

ALSO PRESENT

Ms. Kim Alexander, California Voter Foundation

Mr. Alfie Charles, Sequoia Voting Systems

Mr. Steve Chessin, Californians for Electoral Reform

Mr. Lou Dedier, Election Systems and Software

Ms. Jill Lavine, Sacramento County

Ms. Lucille Moyer

Ms. Maureen Smith, Peace & Freedom Party

Mr. Michael J. Smith, Peace and Freedom Party

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CHAIRPERSON KYLE: Good morning. Let's get started. My name is Mark Kyle. I'm the Chair of the Voting Systems and Procedures Panel. We'll start the meeting today on September 9th, 2004. Welcome, everyone who's here.

And, first of all, let's deal with the agenda item. The previous agenda that had been posted was for September 9th, with Avante as a first agenda item; Election Systems and Software, second; other business is third. And Mr. Wagaman, our staff, indicates that Avante made a request to postpone -- to roll it over to October 5th. And will that comply with any kind of November 2nd needs that we might have?

ELECTIONS ANALYST WAGAMAN: Avante is not currently used in any California counties, so therefore it wouldn't affect anything for the November election.

CHAIRPERSON KYLE: So October 5th is fine?

ELECTIONS ANALYST WAGAMAN: Correct.

CHAIRPERSON KYLE: We'll go ahead and do that. Mr. Jefferson.

PANEL MEMBER JEFFERSON: My question is, do we have to consider Avante before the election at all?

CHAIRPERSON KYLE: We do not, according to the question I just asked.

1 PANEL MEMBER JEFFERSON: I was thinking we might
2 be revising our own certification procedures anyway, and
3 we might want to include Avante under them at a later date
4 even than October 5th.

5 CHAIRPERSON KYLE: Sure.

6 PANEL MEMBER JEFFERSON: So basically minimizing
7 our work for the election and postponing things not
8 relevant to the election, is what I was thinking.

9 CHAIRPERSON KYLE: Okay.

10 ELECTIONS ANALYST WAGAMAN: I can work on the
11 agenda or the schedule with the vendor after the meeting.

12 CHAIRPERSON KYLE: That's a good suggestion,
13 Mr. Jefferson, so we can concentrate on November.

14 All right. We have everyone here, I believe,
15 with the exception of Debrah Jones, who is out ill today.
16 So we have a quorum, and we will proceed.

17 I'd like to go to the Election Systems and
18 Software presentation. Mr. Wagaman, you have the floor.

19 ELECTIONS ANALYST WAGAMAN: Thank you, Mr. Chair.
20 The application before you is from Election Systems and
21 Software. It consists of four system components, all of
22 which have been previously certified at one point in the
23 state.

24 The first is Unity Version 2.4.3. Unity is the
25 vendor's election management software package. It's an

1 upgrade from the currently certified Version 2.2. Unity
2 is actually a software -- a suite of programs. It's not
3 one single program.

4 The following subcomponents were part of state
5 testing and, therefore, a part of the certification
6 application before you: Audit Manager 7.2.1.0; EDM
7 7.2.1.0; ESSIM 7.2.0.0; HPM 5.0.3.0; and ERM 6.4.3.0.

8 Those different components either serve different
9 functions or different parts of the vendor's suite of
10 voting systems they support. So some may support certain
11 scanners, while other ones support different scanners.
12 Some of them may work ballot layout, while other ones do
13 tabulation. If you want to go into detail about that
14 after the staff report, I'd be happy to. I have a vendor
15 here as well to help with that.

16 The changes to the Unity package fall into three
17 broad categories. The first is added functionality, a
18 couple of which are of note. One is support for the
19 California Primary. They increase the number of ballot
20 styles the system can support. Obviously, with the
21 crossover voting in the California Primary, the number of
22 ballot styles increases. Support for larger elections,
23 larger ballots, and adding an absentee ballot cast field
24 onto the California Statement of Vote Report the system
25 generates.

1 There is also a series of anomaly fixes. The one
2 of note, this system was originally qualified with a NASED
3 number issued on Version 2.4.2. State testing commenced
4 with that version.

5 During state testing, an anomaly was found where
6 with very long ballots with a lot of different races on
7 them, the system would, after a certain number of
8 contests, skip and take the data that was in one column
9 and move it up to a second column. But the program was
10 still looking for it in that first column, so you get a
11 series of zeroes. The machine -- the scanners themselves
12 were counting the ballots correctly. It was the
13 transition over to the central tabulation where after you
14 hit a certain contest number X, all the results below it
15 would be inaccurate.

16 So that was found during state testing, which
17 forced the vendor to go back and make a software change
18 and go back and go through the federal process and come
19 back and go through the state process again.

20 The third category of changes were changes
21 related to FEC 2002 coding standards. There's a typo in
22 the staff report. The testing of the changes was to the
23 2002 standards. Not all of the parts of the code were
24 reviewed to the 2002 standards. Therefore, the overall
25 qualification will be to the 1990 standards.

1 The second component of the application is the
2 Model 100 Version 5.0.0.0. There is a picture of it on
3 page 5 of the consultant's report. It's a precinct count
4 scanner. It includes a built-in printer to produce zero
5 reports, close reports, audit reports. It is programmed
6 using a removable memory card. The results are also
7 stored on that card. The changes from the previous
8 version were, again, mostly added functionalities:
9 Supporting two-sided ballots; supporting larger ballots
10 again; and improvement to the calibration system, which
11 included improved detection of attempts to falsify or
12 create counterfeit ballots.

13 The third component is the Model 550 Version
14 2.1.1.0. This is a central count scanner. Again, there
15 is a picture on page 5 of the consultant's report. The
16 550 is programmed using a removable EPROM chip. The
17 results are stored on a separate removable floppy disk.
18 The scanner, again, includes attached printer, again,
19 with -- it actually has two printers attached to it. One
20 is a backup in case one fails. The primary change here
21 is, again, to support more ballot styles, again, to
22 support the California Primary.

23 The fourth component is the Model 650 Version
24 1.2.0.0, again, it's a central count scanner. It looks
25 very much like the 550. Again, a picture on page 5 of the

1 consultant's report.

2 The major differences from the 550 that are
3 visible are instead of being programmed using the EPROM
4 and the floppy disk, the program is done by removable zip
5 disk. The results are stored on that same zip disk. It
6 also includes a built-in hard drive which supports the
7 machine running faster, and it makes it a little bit more
8 resilient to things like power fluctuations or other types
9 of problems during scanning.

10 Again, the primary change is supporting the increased
11 number of ballot styles for the California Primary.

12 The testing status, as I noted before, Version
13 2.4.2 -- 2.4.2 of Unity was qualified and was issued a
14 NASED number. During state testing, an anomaly was found.
15 That was changed, creating Version 2.4.3. That version
16 does not yet have a NASED number. I believe the vendor
17 can correct me if I'm wrong, that number is expected in
18 the next couple of days. But as that number is not yet
19 available, it would be staff's recommendation that that be
20 one of the conditions on certification, the issuance of
21 that number. There are copies of the IT reports. We do
22 have long completion letters in your packets.

23 As for state testing, we did go through two
24 different rounds of testing with the system, one at the
25 vendor's facility and one here in Sacramento. You have a

1 copy on Tab 2 of your binders of the consultant's report,
2 a significant portion of which touches on security issues,
3 which I'll go into in more detail.

4 The security concerns raised in Mr. Freeman's
5 report ranged from issues like an overemphasis on physical
6 over technical security and procedures, proper use of
7 password controls, key lock designs, inadequate protection
8 scans, unauthorized software being installed. In
9 response, the vendors worked with the Secretary of State
10 staff to update their procedures.

11 The major changes in the procedures are in
12 Chapter 6 of both the Model 100 and the Model 550 and 650
13 procedures. Most of those changes are going to be
14 familiar to the panel. They're very similar to those the
15 panel required for the Diebold OS and TS systems:
16 Requiring good physical security around the central
17 tabulation system, good password practices, increased use
18 of tamper-proof seals, practices to ensure that
19 unauthorized or unneeded software is not installed,
20 buyer's protection, firewall protections, networking
21 controls, including the requirement from before that the
22 tally tape be printed before the modem is used.

23 So those issues have been addressed to staff's
24 satisfaction; the security concerns that have been raised
25 raising the securities procedures to the same level that

1 we've expected from other vendors; and, again, a
2 recommendation on certifications that would include the
3 same language we're now including with all the vendors;
4 that the procedures can be amended at a future date to
5 enhance the security, reliability, or accuracy of the
6 system.

7 The current certification status issue raised in
8 the staff report, all these systems have been previously
9 certified. However, during the audit conducted previously
10 by R&G, some of the version numbers found out there we've
11 not been able to verify the certification status of.
12 Therefore, the staff recommendation is the same, that,
13 again, was implemented with the Diebold system that the
14 vendor -- for those systems that staff cannot verify the
15 certification of, the vendor would be required to upgrade
16 them to the newly certified version at their cost.

17 Finally, a couple of other minor points. Review
18 of state and federal laws and regulations. This system
19 can accommodate the California provisional requirements.
20 It's done through a manual process of recreating the
21 ballot for somebody who votes in the wrong precinct. It's
22 not handled automatically by the software. And, again,
23 the system can support the California Primary. Some of
24 the changes are specifically for that purpose.

25 Leading to the staff recommendation, which is

1 that the panel recommends certification for ES&S Unity
2 2.4.3 consisting of Audit Manager 7.0.2.0, EDM 7.2.1.0,
3 ESSIM 7.2.0.0, HPM 5.0.3.0, and ERM 6.4.3.0; and
4 additionally certifying Model 100 5.0.0, Model 550
5 2.1.1.0, and Model 650 1.2.0.0; with the following
6 conditions:

7 Vendor must submit final reports from the Federal
8 Independent Testing Authorities for all system components
9 prior to their use in the California election.

10 Vendor must obtain and submit a copy of federal
11 qualification for all system components prior to their use
12 in California election.

13 And ES&S shall replace at its costs any system
14 component for the Model 100, Model 550, Model 650
15 identified by the Secretary of State's Office as lacking
16 state certification in all its client jurisdictions in the
17 state with the certified components contained herein prior
18 to the November 2004 general election.

19 And, again, the standard conditions that would
20 apply to all vendors.

21 Are there any questions from the panel? That
22 concludes the staff report.

23 CHAIRPERSON KYLE: Panel members? John? Lee?
24 Mr. Jefferson.

25 PANEL MEMBER JEFFERSON: Yeah. I have some

1 general questions and some security questions.

2 Are all of these components listed here actually
3 intended to be used by one of our counties? Are we being
4 asked to certify any systems that, in fact, would not be
5 relevant to the coming election?

6 ELECTIONS ANALYST WAGAMAN: As far as the Unity
7 package itself, there are other components that are used
8 to support Unity. There are other parts that are part of
9 that. We only test those portions that are necessary to
10 support those three models that are part of the
11 certification. So the certification will be limited to
12 those components. The Model 100, the Model 550, and the
13 Model 650 are all intended to be used in California.

14 PANEL MEMBER JEFFERSON: For the coming election?

15 ELECTIONS ANALYST WAGAMAN: In a California
16 jurisdiction in the coming election.

17 PANEL MEMBER JEFFERSON: Second general question
18 regarding the federal qualification. So you noted that
19 although we have ITA reports on the systems in question,
20 we don't actually have NASED numbers for all of these yet?

21 ELECTIONS ANALYST WAGAMAN: There are NASED
22 numbers issued, but not for the complete package, correct.

23 PANEL MEMBER JEFFERSON: The NASED number for the
24 complete package hasn't been issued. So I understand your
25 recommendation that they submit that federal qualification

1 for the complete package before use. But I would like to
2 suggest that we should put a much earlier deadline than
3 the day before the election. When do we expect the NASED
4 certificate to be issued?

5 ELECTIONS ANALYST WAGAMAN: They submitted -- the
6 final reports went to the Technical Oversight Committee, I
7 believe, eight or nine days ago. They have ten days to
8 respond. With the holiday, that's going to be either
9 Friday or Monday. Obviously, sometimes there are holdups
10 on the federal level, so I want to give a little leeway
11 from that. But if the panel wanted to require an earlier
12 date, the panel could take that action at their
13 discretion.

14 CHAIRPERSON KYLE: Let me jump in at this point
15 in time.

16 What you just told us, Mike, is based on what?
17 Your conversations with the vendor, or your conversations
18 with the ITA?

19 ELECTIONS ANALYST WAGAMAN: That's based on my
20 conversations with the vendor and Mr. Freeman's
21 conversation as part of the Oversight Committee.

22 CHAIRPERSON KYLE: Mr. Freeman's conversation
23 with whom?

24 ELECTIONS ANALYST WAGAMAN: He is a member of the
25 Oversight Committee.

1 CHAIRPERSON KYLE: So your conversations with
2 him.

3 Can I have the vendor representative come up at
4 this time? Let's ask that question to the vendor.

5 Would you identify yourself for the record,
6 please.

7 MR. DEDIER: Sure. Lou Dedier, Vice President
8 and General Manager for Election Systems and Software.

9 CHAIRPERSON KYLE: Mr. Dedier, would you please
10 tell us your understanding of what the status is, in terms
11 of what's gone from your company to the ITA, where the ITA
12 is, and what your anticipated response is?

13 MR. DEDIER: The package was sent in about eight
14 days ago. The turnaround is ten days. We've been told
15 they anticipate Friday or Monday. The holiday was an
16 issue, because the holiday is not a workday. And we
17 should be anticipating that. I put a call in this morning
18 asking for a status, but the more calls you put in doesn't
19 really help. What it is is their date and their time
20 lines. They're not behind until Monday.

21 PANEL MEMBER JEFFERSON: So my question is, would
22 it be appropriate for us to say they should have a
23 certificate by, say, a week from tomorrow?

24 CHAIRPERSON KYLE: A date certain.

25 PANEL MEMBER JEFFERSON: A date certain well

1 before the election.

2 CHAIRPERSON KYLE: I think we need that. I was
3 going to make the same suggestion. It was a note I had.
4 And why don't we proceed with other questions and keep
5 that and then have a discussion as to what might be a good
6 date certain. And we'll want to call on the vendor, and
7 on your recommendations on that, Mr. Wagaman.

8 Do you want to go to another general question?

9 Thank you, Lou.

10 PANEL MEMBER JEFFERSON: Then I was going to
11 proceed to more detailed questions. And I'm willing to
12 let others go first.

13 CHAIRPERSON KYLE: Okay. Tony.

14 PANEL MEMBER MILLER: Thank you, Mr. Chairperson.

15 In your oral presentation you indicated the
16 standard conditions would apply. One of those standard
17 conditions would be the addition of security enhancements
18 to the procedures, if determined to be appropriate with
19 reasonable notice to the vendor and the users.

20 ELECTIONS ANALYST WAGAMAN: Correct. That's
21 language that we've started including in all the
22 certifications as of last month that would -- not just for
23 security, but accuracy and reliability issues as well that
24 would allow that amendment to go forward without a full
25 hearing.

1 PANEL MEMBER MILLER: Thank you. And the other
2 question. If we were to restrict certification, impose
3 one of the conditions being used at the November election
4 only or as otherwise specifically authorized by the
5 Secretary of State, because as Mr. Chairperson had
6 suggested, perhaps we will be changing some of the
7 certification procedures post election. And so I want to
8 consider that option. If we restricted it only to
9 November, or as otherwise specifically authorized by the
10 Secretary of State in case of a special election, for
11 example, that might come up, would that cause any problems
12 as far as you're concerned?

13 ELECTIONS ANALYST WAGAMAN: My one recommendation
14 would be that the Panel can always take whatever action it
15 feels is appropriate. One thing I would ask the Panel to
16 keep in mind is also elections that occur in 2005, which
17 is when I believe this process would be going forward,
18 local elections and what's the best mechanism to
19 accommodate those elections.

20 PANEL MEMBER MILLER: That's why I was suggesting
21 the Secretary of State's specific authorization to provide
22 for those kinds of circumstances as a safety valve so that
23 there would be an operational system.

24 PANEL MEMBER MILLER: Thank you, Mr. Chairman.

25 CHAIRPERSON KYLE: Mr. Miller, good suggestion.

1 I was thinking along those lines as well.

2 PANEL MEMBER MILLER: Of course you were.

3 CHAIRPERSON KYLE: Trying to steal all the good
4 ideas.

5 Along those lines, let me amplify on that and
6 then I'll come back to you. Could you just list the
7 counties that are client counties?

8 ELECTIONS ANALYST WAGAMAN: That are client
9 counties of ES&S or client counties affected by this
10 application?

11 CHAIRPERSON KYLE: Client counties affected by
12 this application, because I think it goes to the issue of
13 2005.

14 ELECTIONS ANALYST WAGAMAN: The client counties I
15 believe to be affected by this application are Colusa,
16 Nevada, Stanislaus, Tuolumne, and the two new counties
17 adding the system, Solano and Sacramento.

18 CHAIRPERSON KYLE: Okay. And are you aware of
19 local elections in any of those counties in 2005?

20 ELECTIONS ANALYST WAGAMAN: I know some of those
21 do have elections in 2005.

22 CHAIRPERSON KYLE: And do you have any kind of
23 idea of the dates of those elections?

24 ELECTIONS ANALYST WAGAMAN: I do not have that
25 information with me.

1 CHAIRPERSON KYLE: We don't know if it's March,
2 May, June, April, January? All right. So that's
3 something I'd like to direct you to figure out. Please
4 have staff figure that out working with the counties.

5 Are there any county representatives from any of
6 those counties here today?

7 Ma'am, would you please identify yourself. Maybe
8 you could just address that specific question and if you
9 have any other comments.

10 MS. LAVINE: Jill Lavine, Registrar of Sacramento
11 County.

12 At this time we have none planned, but we do have
13 a couple on the back burner, a library issue in May. And
14 we have the Arco Arena issue that has been boiling. So
15 we're not sure.

16 CHAIRPERSON KYLE: So nothing, but potentially a
17 couple of things?

18 MS. LAVINE: Just a potential.

19 CHAIRPERSON KYLE: Thank you.

20 Mr. Mott-Smith.

21 PANEL MEMBER MOTT-SMITH: Could you expand a
22 little bit? Because I think the point that Jill is making
23 is that many of these counties, if not all of them,
24 because of the filing deadlines, et cetera, won't know
25 whether they have an election in 2005 until they actually

1 approach those deadlines.

2 CHAIRPERSON KYLE: What would be your deadline,
3 Ms. Lavine?

4 MS. LAVINE: Right now -- I met with the library
5 yesterday, and they were waiting until after the November
6 election. If that happens, their turnaround time is one
7 month for the 88-day close the first day of December so
8 they can get onto the ballot early in the spring. That's
9 what we're looking at.

10 CHAIRPERSON KYLE: Okay. Thank you.

11 MS. LAVINE: Thank you.

12 CHAIRPERSON KYLE: Ms. Daniels-Meade.

13 PANEL MEMBER DANIELS-MEADE: Michael, I had a
14 couple of questions. They actually come out of the Steve
15 Freeman report. But one of them was -- I'm pretty sure
16 it's in the Steve Freeman report, anyway, about rotate
17 issues with respect to rotation. And it had to be
18 manually done after the first rotation or something. Is
19 there some reason ES&S can't provide a rotation in the
20 system like --

21 ELECTIONS ANALYST WAGAMAN: The California
22 rotation rules are probably the most complex in the
23 country.

24 PANEL MEMBER DANIELS-MEADE: I'm aware of that.

25 ELECTIONS ANALYST WAGAMAN: The automatic system

1 is designed to accommodate rules that are used more
2 commonly in other states, and is not designed to
3 accommodate the California rotation rules. It can
4 accommodate through a manual process, but it's not
5 designed to be an automatic process.

6 PANEL MEMBER DANIELS-MEADE: Is that something
7 they anticipate doing, do you know?

8 ELECTIONS ANALYST WAGAMAN: I would have to defer
9 to the vendor on that question.

10 CHAIRPERSON KYLE: Lou, would you mind trying to
11 answer that question?

12 MR. DEDIER: The automated rotation, what we're
13 doing now when we build a system, basically it's built for
14 U.S. specific. And now we're basically to a point where
15 we're defining it more for California. So that is in the
16 works, the building and continuing products.

17 It's kind of like where 2.4.2 came in. It was
18 general for the U.S. and didn't necessarily apply to
19 California. So we're getting smarter as we go along the
20 way.

21 In other words, applying certification on
22 California-based election at the federal level before we
23 get here. So that will be something that's always in
24 there. In fact, in the next version of software and
25 upgrades it's continuous. It's coming in the next year,

1 right the first part of the year. So we'll be back to you
2 again.

3 PANEL MEMBER DANIELS-MEADE: We'll be visiting
4 that issue again.

5 I was Chief of Elections the first time we ever
6 rotated candidates. And you do have my sympathy, believe
7 me.

8 The second question I had was related to
9 something that was in the Freeman report on page 3 --
10 actually, it's in the conclusion where they're talking
11 about addressing some of the security issues by removing
12 key components for overnight storage. And I have some
13 concerns about that.

14 I mean, number one, is it practical to expect
15 that the precinct inspector or supervisor, or whatever
16 they're going to call it, the person who gets the
17 equipment prior to the election -- is it really realistic
18 to expect they're going to remove whatever they're
19 supposed to remove from the system and store it and put it
20 back in where it belongs the next day and without any
21 problem? To me, that is a security concern.

22 ELECTIONS ANALYST WAGAMAN: The requirement that
23 was added to the procedures is that once the memory card
24 is installed in that -- this is only applying to the 100s.
25 Once that memory card is installed and that system is no

1 longer a dumb system, that the vendor or the client county
2 would have to take security steps to secure that unit both
3 within the county and once it's gone out to the precinct.
4 It specifies the county would have to define how that is
5 done and how that would be secure. It also specifies some
6 of the things they do have to do, like the tamper-proof
7 seals on the door that contains the memory card. But it
8 doesn't necessarily say you have to secure it in this
9 particular way.

10 PANEL MEMBER DANIELS-MEADE: Also, I'm not seeing
11 it immediately, but three different systems have three
12 different storage mediums for result; is that correct?

13 ELECTIONS ANALYST WAGAMAN: Correct.

14 PANEL MEMBER DANIELS-MEADE: We have a memory, a
15 diskette, and a flash.

16 ELECTIONS ANALYST WAGAMAN: It's flash memory
17 card, a zip disk, and a floppy disk. The 550 is actually
18 a little bit more complicated. And it's programmed using
19 the EPROM, and the results are stored on the floppy disk.

20 PANEL MEMBER DANIELS-MEADE: Okay. I'm a little
21 bit concerned, because at least I know with the zip drive
22 you can store an incredible amount of memory on that,
23 including programs, including software. Are there any
24 kind of restrictions we're looking at with respect to
25 those? I know it's pretty safe with a floppy disk because

1 you can't get too much on the floppy.

2 ELECTIONS ANALYST WAGAMAN: One of the security
3 requirements in the revised procedures is that the
4 virus before those disks are used -- any disk, CD Rom, DVD
5 like would have to be scanned by that anti-virus software
6 that's installed on the central computer. That's one of
7 the conditions added to the procedures.

8 PANEL MEMBER DANIELS-MEADE: That wouldn't
9 prevent some software being on it, however, would it?

10 ELECTIONS ANALYST WAGAMAN: It would depend on
11 the nature that --

12 PANEL MEMBER DANIELS-MEADE: As long as it didn't
13 have a virus in it, it would pass; right?

14 ELECTIONS ANALYST WAGAMAN: It would depend on
15 the nature of what that program was that was potentially
16 loaded on.

17 PANEL MEMBER JEFFERSON: Could I follow up on
18 this, Ms. Daniels-Meade?

19 PANEL MEMBER DANIELS-MEADE: Yes.

20 PANEL MEMBER JEFFERSON: I had a similar concern.
21 And this is also a comment, I guess, to that ES&S
22 representative. That in the 650, the very same disk, if I
23 read correctly, that is used to hold the software as the
24 votes are written on. I'm very uncomfortable with having
25 the software for the server on any writable medium. I

1 don't know why it's not on a CD. It means we may have an
2 additional concern knowing that the software running on
3 the 650 is, in fact, the certified software because it has
4 to be transferred somehow.

5 ELECTIONS ANALYST WAGAMAN: It's not the
6 software. What we're referring to is ballot definitions,
7 is what I'm talking about.

8 PANEL MEMBER JEFFERSON: Same answer, because
9 similar problems can occur with ballot definitions. But I
10 appreciate that. I thought it was the software. And you
11 don't want these things on writable media at all. The
12 only thing you want being written is the vote files.

13 CHAIRPERSON KYLE: Any further points,
14 Ms. Daniels-Meade?

15 Mr. Jefferson, you indicated you had a few more
16 questions.

17 PANEL MEMBER JEFFERSON: Yes, I do. Do you want
18 to go ahead first, Marc?

19 PANEL MEMBER CARRELL: Yes.

20 CHAIRPERSON KYLE: Mr. Carrell.

21 PANEL MEMBER CARRELL: Thanks. I have two
22 questions.

23 First, looking at Mr. Freeman's report, he states
24 that -- he discussed some of the security concerns. Then
25 he says one possible action may require additional

1 software security review pending the results reported in
2 the final Federal ITA report, which is pending. And your
3 staff recommendation is before use, the vendor must submit
4 final reports from ITA and vendor must obtain copies of
5 the NASED number.

6 But I guess my question is even if we get that
7 from the vendor, and then the vendor believes they can go
8 use it and there are additional security concerns raised
9 as a result of the ITA reports, how does that --
10 procedurally, how can we address that if we believe or
11 Mr. Freeman believes there are issues presented in the ITA
12 report that need additional testing and we've basically
13 provided certification pending receipt of reports and then
14 a follow-up from the reports?

15 ELECTIONS ANALYST WAGAMAN: I believe Mr. Freeman
16 was referring to, there may be additional procedures that
17 are required based on what he sees in that ITA report and
18 there would be a mechanism built into the certification to
19 allow us to modify those procedures and add those
20 additional procedures if it enhanced the security or
21 reliability or accuracy of the system with proper notice
22 to the vendor and jurisdiction.

23 PANEL MEMBER CARRELL: So he's just talking about
24 additional procedures, not talking about --

25 ELECTIONS ANALYST WAGAMAN: A lot of his initial

1 concerns were related to the fact that he did not know if
2 the testing of the changes had been the 1990 or 2002
3 standards, which we later were able to verify was to the
4 2002 standards which covered a lot of the concerns he had.

5 There are additional software changes that, as
6 with all systems, making the wall higher. But these are
7 the procedures for the current version that would put in
8 security that staff recommends and believes would be
9 adequate for the November election.

10 PANEL MEMBER CARRELL: Thank you.

11 My second question is regarding the report
12 that -- test results based on the testing of NASED -- if
13 the ITA did not find some of the misreported data that you
14 talked about and that was found by California testing.
15 I'm just wondering what the ITA's reaction was when we
16 notified them that we caught something they didn't catch.

17 ELECTIONS ANALYST WAGAMAN: I was not the
18 particular staffer who notified the ITA of that particular
19 discovery, so I would hesitate to comment on what their
20 reaction would be. I'm sure it would be what you would
21 imagine.

22 PANEL MEMBER CARRELL: Thanks.

23 CHAIRPERSON KYLE: Mr. Jefferson.

24 PANEL MEMBER JEFFERSON: So Mr. Freeman makes a
25 remark that ES&S procedures tend to emphasize the use of

1 restricted physical access to the equipment as the main
2 security control required. He then -- later on page 6 he
3 makes a similar remark. "ES&S recommends isolation of the
4 Unity servers with no telecommunications or other uses
5 that could expose the service to virus or other forms of
6 attack." One of my questions is if they recommend that
7 there be no telecommunications attached to the server,
8 does that mean that none of our counties will modem their
9 results in from -- to these -- I guess the 650 is the --
10 so I'm talking about the precinct.

11 ELECTIONS ANALYST WAGAMAN: This would only apply
12 to the 100.

13 PANEL MEMBER JEFFERSON: In that case, do we or
14 do we not modem in results from the precincts?

15 ELECTIONS ANALYST WAGAMAN: I can't speak to what
16 individual clients are doing. I don't have that
17 information. The system itself is capable of modeming,
18 which is why we added the same thing we added with using
19 the backup.

20 The two things we required from modeming that we
21 required before: One, that the tape is produced prior to
22 the modeming occurring; and, two, that prior to the
23 modeming occurring, a backup of the database be created
24 and put in a secure location. The results would be sent
25 into the first copy of the data set, the unofficial

1 results by modem. After that's been done, the backup be
2 restored from that secured location, and the official
3 results go into that backup to, again, prevent corruption
4 from any modeming that may occur.

5 I would have to defer to the vendor about whether
6 any of their clients are planning on that using the
7 feature. The system is capable of it, so --

8 PANEL MEMBER JEFFERSON: The point I was making
9 is that it says here that the vendor recommends isolation,
10 and with no telecommunications equipment attached, which
11 would seem to me that the vendor is recommending not using
12 this modeming procedure; is that the correct
13 understanding?

14 CHAIRPERSON KYLE: Perhaps the vendor could
15 address that question.

16 Would you want to address that?

17 MR. DEDIER: No problem. What you're referring
18 to is the DAM, which is the data acquisition manager.
19 What it does is transfer. We did not bring that forward
20 in the 650, 550 or 100, because we are, basically,
21 listening to the issues of the Secretary of State and the
22 idea of modeming. We've isolated the servers and
23 basically did sneaker net transfer of data, or basically,
24 you know, secure BPN type lines --

25 PANEL MEMBER JEFFERSON: It would be appropriate

1 for us to --

2 MR. DEDIER: We did not bring DAM inside that
3 module. It is not residing within your package. That's
4 why we put it in our procedures basically that we don't
5 recommend it, because those procedures are for general
6 use.

7 PANEL MEMBER JEFFERSON: It would be appropriate
8 for us to recommend that counties using the 100 not modem
9 results from the precincts, but carry either the units or
10 the memory cards to the central location?

11 MR. DEDIER: We have no problem with that.

12 ELECTIONS ANALYST WAGAMAN: Staff would have
13 no --

14 PANEL MEMBER JEFFERSON: I would like to suggest
15 that, then.

16 MR. DEDIER: I don't think DAM was brought
17 forward as well so --

18 CHAIRPERSON KYLE: Does that mean it's not
19 capable or it's dormant, but resides --

20 MR. DEDIER: Even in Sacramento there were no
21 modems sold. In Solano there were no modems sold. We
22 have no intentions of doing modem.

23 CHAIRPERSON KYLE: What about the other four?

24 MR. DEDIER: The other ones are basically on
25 center tabulation. They all come back into Sacramento

1 anyway.

2 PANEL MEMBER JEFFERSON: Nobody would be impacted
3 if we just made that a requirement then?

4 CHAIRPERSON KYLE: Right. Make it an outright
5 prohibition.

6 PANEL MEMBER JEFFERSON: Which makes me much more
7 comfortable, because Mr. Freeman mentioned a number of
8 administrative security limitations of the server, and his
9 comment about physical access to the server being
10 important.

11 So my second question is, what is the status of
12 logging of people who have access to the Unity server in
13 the ES&S counties? Is there a log of that? And I guess I
14 can address Mr. Wagaman first.

15 ELECTIONS ANALYST WAGAMAN: I can do that, and
16 the vendor can speak to the client's current practices.

17 The procedures do -- they require physical
18 security being put around the server. It does not
19 necessarily require a log, because there are different
20 ways you can implement that security. It does require
21 improvement to user IDs and password securities. So
22 somebody -- only the person who's allowed has that user
23 ID, is not allowed to have somebody using their user ID.
24 So those kind of things to limit that access and limit
25 that ability to access the server. Whether a specific log

1 is required for access to that room, it's not in the
2 procedures right now.

3 PANEL MEMBER JEFFERSON: I only mean access to
4 the server. I meant interactive access to the server. I
5 wasn't thinking about logging access to the room
6 necessarily.

7 ELECTIONS ANALYST WAGAMAN: The current mechanism
8 is that it's the password protection, the layered password
9 protection.

10 PANEL MEMBER JEFFERSON: But not the logging?

11 ELECTIONS ANALYST WAGAMAN: The logging is not
12 required in procedures. Whether it's done in practice,
13 I'd have to refer to the vendor.

14 PANEL MEMBER JEFFERSON: Is that capability
15 there?

16 MR. DEDIER: The capability is there based on the
17 operating system. What they typically do in a county
18 installation, when we first install, we install with
19 administrative passwords. Immediately after it's
20 installed, the administrator basically changes the
21 password.

22 PANEL MEMBER JEFFERSON: If we're lucky.

23 MR. DEDIER: They do. It's like in Sacramento
24 where you have the system set up is actually in a room
25 that's recorded. In San Mateo it's the same thing. In

1 Stanislaus, it's the same thing. Everything is videotaped
2 and they have permitted access in.

3 Inside where that server resides is where the
4 county's main network resides. Those protected services
5 are already there for physical security. Then they have
6 layered, multiple passwords which you can pull up and see
7 who's been in what user. But as ES&S, we don't have
8 access to --

9 PANEL MEMBER JEFFERSON: I wasn't really worried
10 about ES&S access. Just a general record of a log which
11 people --

12 MR. DEDIER: They can run a report and tell which
13 operators have access just as any other server.

14 PANEL MEMBER JEFFERSON: Something about what
15 they've done?

16 MR. DEDIER: Exactly.

17 ELECTIONS ANALYST WAGAMAN: I'm sorry I
18 misunderstood your question. There are audit features
19 built into the program. I thought you meant access to the
20 computer.

21 PANEL MEMBER JEFFERSON: That's what I was
22 referring to.

23 ELECTIONS ANALYST WAGAMAN: I apologize for the
24 confusion.

25 PANEL MEMBER JEFFERSON: The audit feature.

1 ELECTIONS ANALYST WAGAMAN: I would -- on that
2 same note, there are audit features built into the
3 scanners as well. Just for your note.

4 PANEL MEMBER JEFFERSON: Okay. Thanks.

5 So as Mr. Freeman says, they depend more heavily
6 on physical security than one might wish. And so I guess
7 I'm not quite sure of the status of what we require in the
8 way of physical security. You were mentioning things that
9 are done in various counties, and I'm just not sure what
10 their formal status is.

11 ELECTIONS ANALYST WAGAMAN: Two issues of note.
12 One is that Mr. Freeman's report was written prior to the
13 submission of the revised procedures. So his report was
14 referencing the previous version of procedures, which were
15 originally distributed to the public and to the Panel.

16 In response to some of the issues concerned,
17 staff did work with the vendor to raise both the technical
18 security and the physical security to raise both sides. A
19 lot of what he's talking about on the over-reliance on
20 physical security is sometimes an under-reliance on other
21 things the system was capable of but wasn't necessarily
22 recommended or required to be used. And those things that
23 the system was capable of that could increase security
24 have been added procedures to require their use to
25 increase that security. So things, again, like the use of

1 tamper-proof seals, the password protection, all the
2 things the system was capable of, just was not required.

3 PANEL MEMBER JEFFERSON: So, Mr. Chairman, I'm
4 satisfied that we can handle what we can handle here. And
5 I know we'll be revisiting this issue after the election.
6 And I guess the only issue that we have to get back to is
7 the date certain issue at some point.

8 CHAIRPERSON KYLE: Okay. Yes, we do. I want to
9 address that now.

10 I want to make a recommendation that we look for
11 date certainties on both Items 1 and 2 in the recommendation.
12 And I want to figure out what's realistic in terms of
13 that, because I want to make a fairly short order.
14 Considering that we have a VSP hearing scheduled for next
15 Tuesday, I'm inclined to suggest that one or both of those
16 occur by the 14th and that we have a status report given
17 to us on the 14th.

18 ELECTIONS ANALYST WAGAMAN: The 14th, we could do
19 that if the Panel wanted. I would just make sure that the
20 Panel would be prepared we may not have that information
21 on the 14th, because that only gets the federal process
22 one day of extra leeway. And as you know, sometimes that
23 is not enough. So the Panel, you know, would just have to
24 be prepared that on next Tuesday staff may come back and
25 say we still haven't got the reports, nothing has been

1 changed. It hasn't been released, and ask the Panel to
2 take action accordingly.

3 CHAIRPERSON KYLE: Well, clearly the report is
4 going to come before the NASED number.

5 ELECTIONS ANALYST WAGAMAN: Correct.

6 CHAIRPERSON KYLE: So Number 1, that might be
7 possible for the 14th. Number 2 is probably not
8 realistic.

9 ELECTIONS ANALYST WAGAMAN: Probably I would say
10 correct. It may be. It may not be. The report has been
11 written. It has not been released at this point. It's
12 pending what the --

13 CHAIRPERSON KYLE: Then I'm going to suggest that
14 we amend Number 1 to get a status report on the 14th, and
15 we shoot for that, if, in fact, Friday or Monday is the
16 date that the vendor has been told.

17 And Number 2, I'm going to suggest later in the
18 month -- and I'm just wondering if the October 5th is too
19 late. I know we have a meeting tentatively scheduled for
20 the 5th.

21 PANEL MEMBER CARRELL: I would request just
22 giving an extra week at this point of the 21st.

23 CHAIRPERSON KYLE: For Number 1?

24 PANEL MEMBER CARRELL: For both Number 1 and
25 Number 2. I recognize the inability to control what

1 happens at the federal level.

2 PANEL MEMBER JEFFERSON: I'm concerned,
3 basically, it's 30 days before the election and, you know,
4 I don't want to feel we should be in the position of
5 leaving the counties on hooks as to whether they can use
6 this system or not up to the 30 days before.

7 I sort of concur with the week, since it sounds
8 like there should be no trouble getting a decision within
9 a week from tomorrow, even if we can't get it by Tuesday.

10 PANEL MEMBER CARRELL: We'll go with the 20th or
11 21st.

12 CHAIRPERSON KYLE: Other thoughts?

13 PANEL MEMBER MOTT-SMITH: I agree. I don't think
14 it has to be tied to a meeting date. I think it could be
15 whatever date we want.

16 ELECTIONS ANALYST WAGAMAN: Just so the Panel is
17 prepared, this is an issue that will probably come up with
18 a couple of the vendors for next week. So if you guys
19 want to set a go-forward policy.

20 CHAIRPERSON KYLE: I'm still going to ask for a
21 status report on the 14th.

22 ELECTIONS ANALYST WAGAMAN: Absolutely.

23 CHAIRPERSON KYLE: Then we'll agree on a date.

24 I want to open it to public comment. And then
25 we'll see if there's any. We're going to have -- so if

1 there's public comments that are on point to ES&S's
2 application, I'll entertain them. If they're not to
3 ES&S's application, I'll ask that you hold them to our
4 second point of business, which is other business.

5 So out of those folks who have submitted yellow
6 cards, are any directly germane to the ES&S application?

7 MS. SMITH: I submitted two different cards.

8 PANEL MEMBER CARRELL: Why don't we call them one
9 by one.

10 CHAIRPERSON KYLE: Why don't we call those that
11 say that they have some interest in ES&S.

12 Mr. Steve Chessin. If you could say your name,
13 spell it, and identify yourself for the record, please.

14 MR. CHESSIN: Thank you. My name is Steve
15 Chessin. Last name is C-h-e- -- double s -- -i-n. I'm
16 President of Californians for Electoral Reform. We're a
17 statewide nonpartisan organization that promotes the use
18 of instant run of voting and forms of proportional
19 representation.

20 And I want to acknowledge the court reporter from
21 Peters Shorthand Reporting Corporation, because I rely on
22 the transcripts that they produce to follow these
23 meetings. I live down in Mountain View. It took me two
24 hours to get here this morning. I wouldn't be here this
25 morning if I didn't think what I had to say wasn't

1 important.

2 I do have a handout that I'd like to pass out to
3 the Panel.

4 CHAIRPERSON KYLE: Certainly. Just hand it to
5 the staff, and we'll get it.

6 ELECTIONS ANALYST WAGAMAN: That was actually in
7 our packets.

8 MR. CHESSIN: I understand, but I'd like to have
9 that --

10 CHAIRPERSON KYLE: Mr. Chessin, it will be
11 entered into the record.

12 MR. CHESSIN: Thank you. It was included in the
13 packets, but I'm not sure of the quality of the
14 transmission.

15 I understand that it's part of the state's HAVA
16 Plan to only certify equipment that can accommodate both
17 cumulative voting and the rank ballots that are necessary
18 for both instant run of voting and choice voting. And I'm
19 quoting now, "in a manner in which voters can easily
20 understand."

21 Now, I understand that staff is going to begin
22 looking at this in depth next year, but our organization
23 is concerned that the equipment you're considering today,
24 next week, and in October may not conform to the HAVA
25 Plan.

1 On one side of this handout, you'll see a bubble
2 sheet I'm holding up right now. It's a specimen ballot
3 from Cambridge, Massachusetts. It's the one they use for
4 their choice voting. It easily accommodates choice
5 voting. It also easily accommodates instant run of
6 voting. You can see they allow people -- there's 19
7 candidates. People can rank all 19 in addition to the
8 write-ins they want to rank. It will also easily
9 accommodate cumulative voting.

10 On the other side is the demonstration ballot
11 from San Francisco, which will be used by ES&S equipment.
12 This is also the same kind of ballot that's used by the
13 ES&S equipment that you are considering today. It's a
14 connect the arrow form. It is barely adequate for instant
15 run of voting. It is totally inadequate for cumulative
16 voting and also totally inadequate for choice voting.

17 In particular, it limits you to ranking three
18 candidates. And while that may be okay if you're only
19 electing one person, if you're electing a large City
20 Council using choice voting, as they do in Cambridge where
21 you need to be able to rank at least as many candidates as
22 you're electing, it's totally inadequate for that.

23 In order to accommodate a bubble sheet, you need
24 to be able to physically scan the entire ballot. You need
25 to have at least one read head per position. I understand

1 the Avante equipment, for example, which has been put
2 forth has what they call a pixel scan where they actually
3 scan. It's the same way your fax machine or a scanner
4 would scan. You also need equipment -- I'm sorry. Can I
5 have the attention of the Panel while I'm addressing my
6 remarks, please?

7 CHAIRPERSON KYLE: Go ahead and continue,
8 Mr. Chessin. We're paying attention.

9 MR. CHESSIN: I appreciate that.

10 In order to accommodate instant run of voting or
11 choice voting, not only do you need to capture all of the
12 rankings, you also need to store them. So you also need
13 to have sufficient memory inside the machine to record all
14 the rankings so when you start to do the transfers, you
15 know how to transfer each person's vote. You can't just
16 count how many people marked this person as their first
17 choice, or how many people marked that person as their
18 second choice and so on.

19 So we would not want to see counties that don't
20 currently use ES&S equipment that can only accommodate the
21 connect the arrow format move to this equipment, because
22 that would create a barrier for them for moving, from even
23 considering instant run of voting or cumulative voting or
24 choice voting. And I'll talk more about that under the
25 other business part.

1 I would urge you to only certify this equipment,
2 if you do certify it, only for counties that currently use
3 it and not for new counties that don't currently use the
4 equipment. And if you have any questions, I'll be happy
5 to take them now. Thank you.

6 CHAIRPERSON KYLE: Any questions from the Panel?

7 Thank you very much.

8 Ms. Alexander.

9 MS. ALEXANDER: Good morning. Kim Alexander with
10 the California Voter Foundation. Actually, I just have a
11 couple questions that I'm hoping the Panel or the vendor
12 can maybe clear up at some point before certification is
13 final.

14 One of them is just to share with you a comment
15 I've heard from a lot of voters who reside in counties
16 that use ES&S equipment. Frequently voters who monitor
17 elections express concern that ES&S employees are hands on
18 on the equipment and not county employees. So I would be
19 interested to know, particularly from the staff's
20 perspective, in looking at the security procedures for the
21 ES&S equipment, particularly the vote counting server, how
22 ES&S procedures might differ from other vendors, such as
23 Sequoia or Diebold, where I'm not hearing the same kind of
24 concerns from voters about vendor employees having such
25 direct access to the servers and unsupervised by county

1 officials. And if it's not addressed in the procedures, I
2 think those are some of the kinds of security concerns
3 that could be addressed there.

4 Another question I hope that the Panel will
5 consider, because it's come up with some of our other
6 vendors in California who are using paper-based voting
7 systems, whether the vendor has the capacity to print the
8 number of ballots that are needed for the voting system on
9 a timely schedule. And while it's important to keep in
10 mind all the infrastructure in any voting system, we all
11 know that a paper-based voting system is relying on having
12 an ample supply of paper ballots, and have heard some
13 concerns raised about -- not ES&S, but other vendors about
14 whether their client counties are bound to buy their
15 ballots from that one specific vendor or whether the
16 client counties have a range of purchasing options, if
17 there are other vendors that can produce ballots that are
18 compliant with the ES&S optical scan voting equipment is
19 something I think we should know.

20 And the last question I have is really about
21 which client counties are impacted by this equipment. I
22 read in the staff report that the Optech Eagle is not
23 included in this recertification, which is what I believe
24 is being used in San Francisco, which the previous speaker
25 was just speaking to.

1 And I know that the Panel is working to get all
2 of the equipment certified and up to better standards in
3 time for the November election, and I'm just wondering --
4 two of the largest ES&S clients in the state are San Mateo
5 and San Francisco, and I don't believe this
6 recertification is impacting those counties. And I'm
7 wondering if there's something coming down the pike later,
8 or whether those counties' equipment is currently
9 satisfactory. Thank you.

10 CHAIRPERSON KYLE: Thank you, Ms. Alexander.

11 PANEL MEMBER CARRELL: I have a question.

12 CHAIRPERSON KYLE: Go ahead.

13 BOARD MEMBER CARRELL: To staff or to counsel,
14 actually, there's discussion here about changing procedure
15 and adding things to the procedures. I'm just wondering,
16 for my curiosity, what the ramification is if a
17 jurisdiction does not follow the procedures. Is there
18 any -- what happens if we determine that they did not
19 follow procedures? Do you have an answer?

20 STAFF COUNSEL STUART: I'd have to check up on
21 that one.

22 BOARD MEMBER CARRELL: If you could. I'm just
23 wondering.

24 CHAIRPERSON KYLE: Consider yourself so directed,
25 Mr. Stuart.

1 Any questions?

2 Let me just make one response to Ms. Alexander.

3 The San Mateo and San Francisco are up for review in a few
4 weeks. They're being reviewed technically and reports
5 pending a couple of weeks.

6 PANEL MEMBER JEFFERSON: For this coming
7 election?

8 CHAIRPERSON KYLE: Yes.

9 ELECTIONS ANALYST WAGAMAN: Their notice is part
10 of the October 5th meeting.

11 PANEL MEMBER JEFFERSON: And so is October 5th
12 the last date that we will consider certification
13 decisions for the November election?

14 ELECTIONS ANALYST WAGAMAN: Well, the deadline
15 for applications is the 17th. Currently, every
16 application we have, with the exception of one, has
17 already been noticed. So it's just if there are any other
18 applications I receive by then, it will be at the Panel's
19 discretion and staff's discretion whether those are needed
20 for November and whether to move forward with them.

21 CHAIRPERSON KYLE: It's our hope that the 5th is
22 the absolute outside --

23 PANEL MEMBER JEFFERSON: Certainly be my hope.

24 CHAIRPERSON KYLE: We tried squeezing it into an
25 earlier meeting. It was technically impossible due to the

1 public notice requirements.

2 Maureen Smith.

3 MS. SMITH: Maureen Smith, Peace and Freedom
4 Party.

5 I have three questions. I only had one when I
6 first came in, and now it's developed to three.

7 One of them is what is all that blacked out
8 material in the report from Mr. Freeman? I normally don't
9 see a lot of blacked out. It looks like a freedom of
10 information act report or something.

11 Number two is, can we -- is it possible to change
12 the medium to a CD, as Mr. Jefferson quarried? I believe
13 that he didn't know why they weren't using a CD for that
14 particular part of the process. And so my question is,
15 can that be changed? Can that be changed for this
16 election so that there is a more secure feeling about that
17 particular situation?

18 And my question that I came with results from
19 what happened at the last meeting after which there was a
20 demonstration by Beth Harris on how Diebold can use a back
21 door. There's a built-in back door, and that votes can be
22 changed in the counting in the Diebold system. So my
23 question is what about this system? Is there any back
24 door in this system?

25 And thank you. I hope that you will not certify

1 until you're really certain about the security. Thanks.

2 CHAIRPERSON KYLE: Thank you, Ms. Smith.

3 Any questions from the Panel regarding those
4 comments?

5 PANEL MEMBER JEFFERSON: I'm willing to respond.

6 CHAIRPERSON KYLE: Go ahead, a little bit.

7 PANEL MEMBER JEFFERSON: With regard to the
8 questions about Diebold, we have had -- the Panel has had
9 a demonstration from Ms. Harris. And I've seen the
10 demonstration twice. I'm definitely concerned about the
11 things she's pointed out, all of which are real. I do,
12 however, disagree with her interpretation in some of those
13 cases. And my belief is that some similar vulnerabilities
14 are also present in the ES&S Unity system, and we do have
15 to address those in the long run. That's why my emphasis
16 is on the questions about the physical and logging of
17 access to the Unity server for the coming election.

18 CHAIRPERSON KYLE: Thank you, Mr. Jefferson.

19 Let me just make a correction that actually some
20 members of the Panel saw the demonstration.

21 PANEL MEMBER JEFFERSON: Sorry.

22 CHAIRPERSON KYLE: Most did not, but I did and a
23 few others did.

24 Let's just respond to the question regarding
25 blackout, because I think that might be general. Some

1 proprietary information was redacted in order to be posted
2 publicly. We're required legally to do that. We actually
3 had a big review. We're trying to comply in a more timely
4 fashion with public notice.

5 You notice the last couple meetings we've had it
6 out close to a week ahead of time, after our election
7 counsel reviews it to make sure we're not breaching any
8 confidentiality that we may be required or because of
9 correspondence that actually does not go directly to us
10 that we're posting but the vendor has agreed to allow it.
11 So it's part of the way the system is set up now. In an
12 ideal world would it be that way? No. And we'll get
13 there some day, but we're not there yet. And right now
14 we're required legally to black out certain information.
15 So we actually have the non-redacted version for private
16 eyes. But for public consumption we have to do that.

17 STAFF COUNSEL STUART: We try to do as little as
18 possible.

19 CHAIRPERSON KYLE: We're trying to minimize it as
20 much as possible so as much information is pushed out to
21 the public as possible.

22 Thank you.

23 So at this point in time, I'm going to reiterate
24 the several suggestions that I've heard from the Panel.

25 PANEL MEMBER MILLER: Mr. Chairman, could I ask a

1 couple of questions first?

2 CHAIRPERSON KYLE: Yes, you may, Mr. Miller.

3 PANEL MEMBER MILLER: Thank you, Mr. Chairman.

4 Maybe the vendor or staff could respond to
5 Ms. Alexander's questions with respect to access by ES&S
6 employees to the server and ballot capacity and print
7 capacity.

8 MR. DEDIER: I'll be happy to do that.

9 What she refers to -- and actually in Stanislaus
10 County, where the equipment was rented and basically the
11 server is set up on a temporary basis, that's where it's a
12 rented piece of equipment. And ES&S is going to be on
13 site with any type of rental of its equipment. Basically,
14 the county staff orchestrates. And I think if you check
15 your county employee records, there were no ES&S staff
16 making transmissions. We are present. We do help out.
17 That's normal in the county. We assist. We do not run
18 the O&A. That's run by the county.

19 Basically, like I explained on the system, we
20 don't have access to that server. That server is changed
21 immediately by the county. We don't even have access to
22 get into a room. We have a different badge. We're
23 clearly identified. That's why they see us, is because we
24 want to be seen. We want you to know those are ES&S staff
25 members.

1 PANEL MEMBER MILLER: Thank you. And in terms of
2 printing capacity for paper ballots.

3 MR. DEDIER: Zero. We have no problems with
4 printing capacity. In fact, if I added another four
5 counties, that wouldn't be an issue or problem. We use
6 multiple vendors to keep the price of ballots down so the
7 county has the ability to move from one vendor to another
8 to drive down the price of paper. Because you'll find out
9 that one price is higher than the other. We rely upon the
10 SOS to maintain a good certified list of those printers,
11 which I believe one more -- in fact, Eagle Press was just
12 done. And they came on board. And that's who Sacramento
13 County is going through for their ballots.

14 ELECTIONS ANALYST WAGAMAN: That's correct.
15 We've actually added two new printers. We've got such a
16 process -- manufacturer added, Eagle Press, in the last
17 two weeks. And in the last week, we added Admail West,
18 which is also Sacramento based.

19 PANEL MEMBER JEFFERSON: Do the counties purchase
20 the blank ballots from the vendor or from the printers?

21 ELECTIONS ANALYST WAGAMAN: The printing process
22 is you're certified as a manufacturer, finisher, printer,
23 or combination thereof. And the county can then purchase
24 from any certified ballot printer for those ballots
25 produced or released. There is a ballot release process

1 where they notify the Secretary of State and receive
2 approval as the ballots move through the process from
3 birth to death basically.

4 MR. DEDIER: I will say one thing. We do have
5 some counties that actually do purchase the ballots from
6 us at the same time, because at a larger volume, we can
7 combine them and actually beat the price. We try to
8 maintain the price on ballots. If we see a printer that's
9 being outrageous, we make it known to the customers.

10 PANEL MEMBER JEFFERSON: Thank you.

11 CHAIRPERSON KYLE: Any further questions?

12 Okay. So I'm going to go back to rearticulating
13 those concerns that I heard articulated by Panel members
14 and the recommendations.

15 One, that we have a date certain. And I heard a
16 recommendation of September -- what's the -- 21st? Okay.

17 Number two, also date certain of September 21.

18 Going down to four, that we add security measure
19 language that we used before, and I want to make that
20 explicit.

21 Number five, that the certification is for the
22 sole use of the November 2, 2004, election, unless or
23 otherwise specifically authorized by the Secretary of
24 State.

25 Number six, that there's no modem use. I'm just

1 using shorthand there.

2 So if those are all the issues raised, if someone
3 would like to make a motion to that effect including some
4 or all of those.

5 PANEL MEMBER CARRELL: So moved.

6 CHAIRPERSON KYLE: Do I hear a second?

7 PANEL MEMBER JEFFERSON: Second.

8 CHAIRPERSON KYLE: Any discussion?

9 PANEL MEMBER DANIELS-MEADE: Mr. Chair, would it
10 be appropriate at this point for me to note my usual style
11 and have found a number of mistakes and typos and
12 grammatical errors in those documents. And I would hope
13 that we would be able to make those corrections before
14 they're officially adopted. I'd be happy to work with the
15 vendor to have me proofread this stuff.

16 CHAIRPERSON KYLE: Does the maker of the motion
17 take that as a friendly amendment?

18 PANEL MEMBER CARRELL: Yes.

19 CHAIRPERSON KYLE: Number seven, that we have
20 typos and errors eliminated from the procedures.

21 PANEL MEMBER CARRELL: The procedures are not
22 adopted until Ms. Daniels-Meade proofreads them.

23 CHAIRPERSON KYLE: Mr. Mott-Smith, you have the
24 floor.

25 PANEL MEMBER MOTT-SMITH: I just want to clarify

1 one. Tony's suggestion about the security language was
2 just one of several boiler plate conditions that we apply
3 to all --

4 CHAIRPERSON KYLE: Correct.

5 PANEL MEMBER MOTT-SMITH: -- applications. So
6 the other ones, they still have to have -- any
7 modifications have to come back?

8 CHAIRPERSON KYLE: Yes. I just want to make sure
9 of that, because it's not in the recommendations -- so if
10 we added language that said all the others including the
11 security measures that we've imposed on everyone else.

12 PANEL MEMBER MOTT-SMITH: Okay.

13 And then, number two, there is a required finding
14 for us in order to certify these. And the finding is
15 actually in the staff report, but it's typically in the
16 certification as well, the language of the finding that
17 this meets the requirement of law. So I assume that's
18 part of what we're incorporating.

19 ELECTIONS ANALYST WAGAMAN: That's part of the
20 standard language, correct.

21 PANEL MEMBER MOTT-SMITH: And then third, a
22 little bit more substantively, perhaps. I'm a little
23 concerned that this is only good for the November election
24 condition. I think I understand what you're getting at,
25 but I'd be more comfortable with something that said the

1 only regularly scheduled state election between now and
2 January 1, 2006, or something like that so that
3 unanticipated local elections, they don't have to come
4 back to us for every single one of their municipal, school
5 district, and other elections. It seems unnecessary to me
6 and burdensome to the counties.

7 CHAIRPERSON KYLE: Mr. Miller.

8 PANEL MEMBER MILLER: Not that many client
9 jurisdictions are involved. And as long as we have the
10 safeguard that the Secretary of State could specifically
11 authorize the use of the systems -- I want to, as soon as
12 possible after the November election --

13 PANEL MEMBER MOTT-SMITH: Before you go on, I
14 want to offer that as an amendment to the motion. So if
15 there's no support for it, I'd like to know that. But if
16 there is support, I'd like to put that into the --

17 CHAIRPERSON KYLE: We're going to have discussion
18 on it now. So I'm going to have Tony respond.
19 Mr. Carrell wants to say something, and I want to say
20 something. And that would indicate whether there's
21 support or not.

22 PANEL MEMBER MILLER: I would certainly like to
23 address the larger certification issues soon after the
24 November election. And this may not be an issue we can,
25 indeed, certify for all elections, prospectively speaking.

1 But I clearly want to send a signal that there may be some
2 changes in the process and that we should, therefore,
3 restrict our certification to the November election, but
4 providing the safety valve with the Secretary of State to
5 authorize. And it can be -- he can authorize if he so
6 chooses, in general terms, in terms of local elections
7 already scheduled or whatever. But I would certainly
8 prefer restricting it, and would, therefore, oppose your
9 proposed amendment.

10 PANEL MEMBER MOTT-SMITH: I didn't get a second.

11 CHAIRPERSON KYLE: Hold on a second, Mr. Carrell.

12 I'd like to make a comment on it as a non-Chair
13 but member of the Panel.

14 I share your concerns, Tony. I believe that we
15 need to re-evaluate all systems after November 2nd. I
16 think we're at a critical juncture. I think after the
17 last 18 months the analysis that's gone into what occurs
18 at our statewide agency and our testing, our evaluation,
19 our recommendation, what occurs at the counties in terms
20 of tracking their testing, their resource ability in order
21 to do testing, the resource ability in terms of operations
22 are all legitimate concerns for us to take a wholesale
23 review of everything that is statewide, including the
24 systems.

25 Having said that -- so I would be in agreement

1 that we conditionally certify this for use only in
2 November, to be re-evaluated after the November election
3 along with everything else. And I think that's a large
4 endeavor, but I think it's a needed endeavor.

5 I believe that if we craft the language as you've
6 suggested, something along the lines of, "or as otherwise
7 specifically authorized by the Secretary of State," it
8 protects the possibility that if a local county has an
9 emergency or short-noticed election, that we would have
10 adequate time to address that and provide that kind of
11 guidance to the county. And what they had, listening to
12 Ms. Lavine's timeline, there's certainly nothing that
13 would preclude us from convening in a timely fashion
14 making a recommendation to the Secretary of State if that
15 were to occur.

16 So I wholeheartedly endorse that motion and would
17 oppose your amendment, Mr. Mott-Smith.

18 Any other comments on this point?

19 PANEL MEMBER CARRELL: No. Do you want to vote
20 on the amendment?

21 PANEL MEMBER MOTT-SMITH: There's not a second.

22 PANEL MEMBER JEFFERSON: I'll second it, just for
23 the record.

24 CHAIRPERSON KYLE: All those in favor of
25 Mr. Mott-Smith's amendment say aye.

1 (Ayes)

2 CHAIRPERSON KYLE: Those opposed.

3 PANEL MEMBER CARRELL: Four to three.

4 CHAIRPERSON KYLE: The no's have it.

5 So I'm going to go back to the --

6 PANEL MEMBER MOTT-SMITH: It was four to three?

7 Who was the third? Marc Carrell.

8 CHAIRPERSON KYLE: I'm going to go back to the
9 original motion that's on the floor. I'm going to call
10 the question.

11 Those in favor please say aye.

12 (Ayes)

13 CHAIRPERSON KYLE: Those opposed.

14 (Ayes)

15 PANEL MEMBER MOTT-SMITH: I'm an aye.

16 CHAIRPERSON KYLE: Anyone abstaining? We have a
17 unanimous.

18 And do you have clear enough instruction on that,
19 staff? And there are two other staff directives on the
20 legal question Mr. Carrell raised and on the survey of the
21 affected counties.

22 Lou, you had a point you wanted to make?

23 MR. DEDIER: Yeah. I wanted to get some
24 clarification, because our understanding of the process
25 within the Secretary of State -- I have five other

1 counties that are going to install systems after November.
2 I can't bring equipment in and install a system for
3 potential use that's not certified by the state of
4 California.

5 CHAIRPERSON KYLE: We're saying it's certified.

6 MR. DEDIER: But they have to receive permission
7 to use it?

8 CHAIRPERSON KYLE: No. We'll take a look at it
9 again after November. It's the same kind of thing that we
10 did with IRV system in San Francisco. That one we're
11 going to do an analysis of it and see how well it works.
12 I think it's to a lesser degree in this case, because
13 that's a unique system in San Francisco. It's never been
14 done before. In this one, it's not as severe.

15 But I believe that we are going to see change, as
16 Mr. Miller indicated, and we need to be able to move
17 forward. Now, it might be that everything looks hunky
18 dory and the continuation is purely on a pro forma basis
19 from the Secretary who writes a letter saying you're
20 allowed to use it for the year 2005. But right now, it
21 could be that we're going to want to analyze it in more
22 depth and have a larger conversation with you and other
23 folks.

24 MR. DEDIER: Okay. Good enough.

25 PANEL MEMBER MOTT-SMITH: Can I pursue that just

1 a little bit?

2 PANEL MEMBER CARRELL: I have a question
3 regarding that, too, because I believe what we did just
4 this is certified only for November, which means it's no
5 longer certified after November. And anyone would have to
6 come back to have a new system installed because it's not
7 certified. But current clients using that system would
8 seek approval. But I'm confused as well by the motion
9 that we've just approved, given the language that was
10 stated.

11 CHAIRPERSON KYLE: The language that was stated
12 that I have is November 2nd, 2004, election only or as
13 otherwise specifically authorized by the SOS. Is that not
14 correct?

15 ELECTIONS ANALYST WAGAMAN: That's correct. And
16 so the staff --

17 CHAIRPERSON KYLE: We all just took a vote on
18 that, and you voted aye, if I'm not --

19 PANEL MEMBER MOTT-SMITH: I understand, but the
20 issue he's raising is in order to compete in a bid
21 situation, for example, or to install a system, it has to
22 be a certified system. They can't enter into a RFP
23 process with a system who's certification ended on
24 November 2nd.

25 CHAIRPERSON KYLE: Then I suspect we'll be seeing

1 Lou on November 3rd or sooner making a request for how do
2 we proceed from here along with --

3 MR. DEDIER: Can I submit the same package
4 because that's what's coming?

5 CHAIRPERSON KYLE: Sure. Yes is the answer.

6 BOARD MEMBER CARRELL: I do have one other
7 comment.

8 CHAIRPERSON KYLE: Mr. Miller, do you have a
9 different interpretation?

10 PANEL MEMBER MILLER: No. And I think we can
11 address the concerns of that vendor and probably the next
12 one in the context of dealing with this after the November
13 election.

14 PANEL MEMBER CARRELL: I think they're forming a
15 line.

16 I want to follow up on what the Chair said
17 earlier regarding the evaluation of all systems. And just
18 put it on everyone's radar screen that the issue of 1990
19 standards versus 2002 standards aren't an issue.

20 Previously, before HAVA was adopted, NASED stated
21 that they believed their policy that they adopted was that
22 every system should be re-certified in 2002 standards by
23 2005. I don't know what the status of that policy is,
24 given the change from HAVA to the EAC and all of the other
25 acronyms out there. But I think we should examine whether

1 we're going to seek re-certification under 2002 standards
2 when we re-evaluate all these systems. Thanks.

3 CHAIRPERSON KYLE: I agree, and I think that's
4 part of it.

5 We are done with Item Number 1, and we're going
6 to move to Item Number 2.

7 ELECTIONS ANALYST WAGAMAN: Staff had two updates
8 under Item Number 2 before you would entertain any other
9 public comment.

10 CHAIRPERSON KYLE: Go ahead.

11 ELECTIONS ANALYST WAGAMAN: Item one relates to
12 AccuVote-OS Certification's Panel a couple weeks ago.
13 Staff did receive copies of a report on the ADO files from
14 the vendor along with copies of the source code for those
15 two files. Those were reviewed by Mr. Freeman and met his
16 satisfaction, and he did not recommend any additional
17 security procedures as a result of that review. So I
18 wanted to let you know that process was completed in a
19 timely fashion.

20 Two, the Residual Vote Report has been completed.
21 But due to copier malfunctions this morning, I was not
22 able to get it into the binder. So it will be ready for
23 you at the 14th date. I apologize and ask for your
24 indulgence.

25 BOARD MEMBER CARRELL: I have an item under other

1 business, and that is that staff and Mr. Mott-Smith and I
2 all traveled to Nevada. I traveled to Nevada for the
3 early voting for the County of Clark, Las Vegas located
4 there. And then was back in Nevada.

5 We had representatives from, I would say, over a
6 dozen counties in California touring different counties in
7 Nevada to see the implementation of the Sequoia Edge
8 system, which is the system that was certified by the feds
9 for a VVPAT paper trail. And I thought that without
10 endorsing their products, and I don't intend to, I think
11 the paper trail system was well received by the voters.
12 And I think that it's only a matter of time before we see
13 other vendors submitting -- any vendor submitting their
14 systems here. So I think that the tide has turned and
15 California hopefully will be second with VVPAT systems in
16 2006.

17 CHAIRPERSON KYLE: Thank you, Mr. Carrell.

18 Any additional comments? I want to open it up to
19 public comments for Item Number 2. Lucille Moyer.

20 MS. MOYER: Hi. My name is Lucille Moyer. I'm
21 from San Jose. My last name is spelled M-o-y-e-r. Common
22 spelling, L-u-c-i-l-l-e.

23 This is the first time I've been up here to
24 Sacramento to participate in these hearings, these panels.
25 And I'm glad I came to see firsthand how you all are

1 handling all this very difficult information and decisions
2 that you have to make.

3 I'm not one of the people who can regurgitate,
4 you know, all the information that you've gone over. You
5 know the problems that are connected with electronic
6 voting, as we all do. And the public is becoming much
7 more aware of it. And, frankly, I came up to tell you how
8 freaked out I am.

9 First, I want to say one thing, too, and that I
10 have a great disappointment walking into this room and
11 only seeing one woman on this Panel. Take that where you
12 want. But that is a big disappointment to me. To me,
13 that's a lack of representation and perspective for the
14 Panel. Not that you're not all intelligent and qualified
15 and all that. But there is a degree of perspective that's
16 not here from the ethnic community and from women. And I
17 think that's a problem.

18 But I basically came to tell you how scared I am.
19 Because things that have gone on in this country with the
20 vote being stolen -- and I think I can say that in all
21 confidence. It's not a shock to any of you or anybody in
22 this audience that the majority of Americans in this
23 country know their vote was stolen in Florida and it
24 wasn't about hanging chads. It was about illegally
25 purging voters from the rolls who were likely to vote

1 democratic, which is a vote against the powers that be and
2 the powers -- the ownership of these electronic voting
3 machines. We all know this. This isn't a shock for me to
4 stand up here and say that. It's an acknowledgement of
5 what we all know.

6 The result of the stolen election, the conflict
7 between Americans that it's created, the death and
8 destruction that's followed. I don't think the people who
9 voted for Bush with faith in his election propaganda ever
10 expected him to start a war that massacred almost 20 to
11 30,000 Iraqis and destroyed an ancient civilization.

12 I don't think they expected him to take a 6, \$7
13 trillion surplus and put this country and our state and
14 local governments in the toilet by conducting an illegal
15 war, and the war crimes that have been involved in it.
16 And I don't think this country has expected the protest
17 before and after the war.

18 I don't think they expected what went on in
19 New York during the Republican National Convention, even
20 though the media didn't -- actively sought to obscure that
21 in the report on it, the horrors --

22 CHAIRPERSON KYLE: I'm going to give you another
23 two minutes. We have other folks who want to speak on
24 election issues.

25 MS. MOYER: I understand that. I'm trying to

1 make the point of why I'm really frightened, because the
2 people are taking to the streets. I'm scared of what will
3 happen if another election is stolen, and these people do
4 what they have set out to do, which is to start a war with
5 Syria and Iran. I'm afraid we will erupt in another world
6 war. And I'm afraid the tyranny of government will result
7 in even more terrorism. I'm terrified for my country.
8 I'm terrified for the people who are going to have to take
9 to the streets to stop this.

10 Now, I understand the job that you have to do
11 here, and this is going on all over the country in every
12 state. This is a problem. Electronic voting is a
13 problem, and we all know that. And I also understand that
14 you're totally engaged in this endeavor. You're stuck
15 with it. You guys are paid a salary to do this.
16 Everybody is here with the best intentions, I'm certain.
17 But I feel like I'm watching an Alice in Wonderland
18 nightmare go on here.

19 I see you arguing over these -- not arguing. I'm
20 sorry. I see you struggling with these issues. This
21 gentleman is telling us that a computer system doesn't
22 even recognize half the ballot, that we have backdoor
23 programs. We have a two-term Senator, Chuck Hegal, who's
24 been elected using his own voting machines. Something is
25 wrong with this picture. We seem to be so stuck in the

1 details. It's like chasing cockroaches. You turn on the
2 light on an issue, the cockroaches scatter. They go back
3 into the woodwork when you turn the light off.

4 These issues come back out --

5 CHAIRPERSON KYLE: Ms. Moyer, 30 more seconds.

6 MS. MOYER: I'm suggesting to you at this
7 point -- I know it's hard to get disengaged from this
8 process. We've invested a lot of money, just like we did
9 with the DMV computer systems. I'm bringing a suggestion
10 to you now. And that is since we can't stop this process,
11 I'm asking you to take whatever taxpayer funds are
12 necessary, go back to our regular voting system of
13 everybody voting on a paper ballot. You can continue with
14 this electronic system as a test. Have them vote twice
15 two different ways. Count the paper ballots and see what
16 these machines are doing as a test. Let the American
17 people, let the people in California participate in a
18 test, and let it only be that now.

19 I'm asking you to stop this now before the
20 terrible results occur. And you all will be held
21 accountable and our elected officials will be held
22 accountable for what ensues. And I'm telling you I
23 believe it's not going to be pretty. So that's my
24 suggestion.

25 CHAIRPERSON KYLE: Thank you, Ms. Moyer. And, in

1 fact, every county that has touch screen machines is
2 required to allow a paper ballot for anyone who wants it.

3 MS. MOYER: Can I make a comment on that very
4 quickly?

5 CHAIRPERSON KYLE: No, you can't. I'm sorry.
6 Michael Smith.

7 MS. SMITH: Michael Smith had to leave
8 temporarily.

9 CHAIRPERSON KYLE: Steve Chessin.

10 MR. CHESSIN: Thank you. Steve Chessin,
11 President of Californians for Electoral Reform.

12 I can't be here when you're meeting on September
13 14th and October 5th. And I would ask staff that my
14 written materials be included in the package for those
15 agenda items.

16 One of the largest barriers to the adoption of
17 instant run of voting, choice voting, and cumulative
18 voting is the equipment issue. If a county's equipment
19 can't handle rank ballots for cumulative voting, the
20 jurisdictions in that county are discouraged from
21 considering those options as solutions to very real
22 problems of representation.

23 For example, a few years ago, Santa Rosa, a
24 charter school in Sonoma County appointed a Charter Review
25 Committee to consider among other things how was the City

1 Council elected, because they had a problem with a lack of
2 representation from a certain demographic that was
3 concentrated in one area of the city. They didn't want to
4 move to district elections. Someone came and spoke to
5 them and taught them about cumulative voting. And they
6 thought, oh, that's a great idea. We'll use cumulative
7 voting. We don't need districts. We'll get adequate
8 representation from all parts of the city. Problem
9 solved.

10 And then the registrar for Sonoma County came in
11 and said, "Excuse me. Our equipment can't handle
12 cumulative voting. If you adopt cumulative voting, you're
13 going to have to run your own election and you're going to
14 have to count your own ballots." That basically threw a
15 wet blanket on the whole concept, and they just stuck with
16 the status quo.

17 So counties make tremendous investments in voting
18 equipment. And once they purchase equipment, they tend to
19 be locked into that equipment for decades. My own county
20 of Santa Clara, for example, moved to punch cards back in
21 the '60s, and only started considering moving away from it
22 the 1990s, 30 years later, and had a plan to move away
23 even before the court decisions came down that invalidated
24 that kind of equipment.

25 So as staff works on these issues in 2005 and

1 comes up with the requirements for cumulative voting and
2 ranked ballots, you may discover next year that you're
3 going to have to decertify the equipment that you're
4 certifying this year. And I would hate to see -- our
5 organization would hate to see additional counties
6 purchase equipment and be locked into that equipment for
7 30 years and then have you say, "Well, I'm sorry. You
8 can't use that equipment anymore." And all this
9 investment has gone down the drain. That's going to make
10 it very difficult for you to decertify that equipment.

11 So I really want you to consider that when you
12 certify equipment and certify upgrades -- I don't have a
13 problem with that because some counties have that
14 equipment. But if some county wants to move to equipment
15 that can't handle cumulative voting or rank ballots,
16 that's going to be a real problem. And I would urge you
17 not to allow that to happen. And our organization will be
18 happy to work with you and your staff next year when they
19 start to look at this issue in depth. Thank you very
20 much.

21 CHAIRPERSON KYLE: Thank you.

22 Maureen Smith.

23 MS. SMITH: Maureen Smith, Santa Cruz County and
24 Peace and Freedom Party. I'm bringing up Santa Cruz
25 County in case my husband doesn't get back.

1 He wanted me to say that there's extreme
2 difficulty now with meeting the HAVA requirements or the
3 ADA requirements for access because of the freezing of the
4 funds, the HAVA moneys, in our county, and I imagine in
5 all the counties. So it's a real issue. And he knows
6 more about it than I.

7 My issue is the same as it was at the last
8 meeting, and that is everybody has the right to a paper
9 ballot, but how do they know that? And the freezing of
10 the HAVA funds, how does that affect your getting the word
11 out to people that they have that right? And is it too
12 late to put it on the ballot pamphlet? Because I feel at
13 least if it were in bold print and on the ballot pamphlet,
14 every household would have the ability to see it. Funding
15 at the local level is really nil at this point. There's
16 just not any money to do any extra things.

17 And last meeting you said that you were
18 considering PSAs and some other things which would be very
19 good, but is that being cut back now because of the HAVA
20 freezing? And, again, please let me know if the ballot
21 pamphlet -- it wouldn't cost that much to put it on the
22 ballot pamphlet, if they haven't already gone to the
23 printers. I don't know where that's at. But I think
24 that's a very -- that's a place it should be, really
25 standing out. And otherwise, I don't think that the right

1 to the -- if you have a right that you don't know about,
2 you know, it's just not that effective. Thank you.

3 CHAIRPERSON KYLE: Thank you, Ms. Smith.

4 I can't really comment a lot, but I'll say this.
5 It's a concern that we share. If you want to help out,
6 send a letter to the Governor saying to reverse his course
7 on freezing it. Get your county to send a letter to the
8 Governor asking the Department of Finance to reverse their
9 course on freezing the funds.

10 Alfie Charles.

11 MR. CHARLES: Good morning. I'm Alfie Charles
12 with Sequoia Voting Systems.

13 I just want to touch base on the issue that was
14 raised during the ES&S discussion. We, too, have concerns
15 about a certification that would effectively expire in
16 November. There are implications for that with
17 Proposition 41 funds with requests for proposals that
18 counties will put out in 2005, if that certification is
19 not active beyond that date. And even if you can go and
20 get approval from the state from a particular election, it
21 makes it difficult for those counties to acquire new
22 systems and get the funding for that process if there is a
23 cloud over the certification status.

24 I think the state has a mechanism in place for
25 decertifying the systems if they choose to do so. They've

1 done so in the past. Then I would hope that that would be
2 the vehicle that's used, and the date certain set for new
3 standards, if there are to be new standards. But I'm
4 concerned about counties' ability to move forward and take
5 advantage of the funding that's available to them in
6 advance of 2006.

7 The second issue I wanted to touch base on was I
8 just wanted to thank the members of this Panel, of the
9 Secretary of State's staff, and the county election
10 officials in California who took time to go to Nevada and
11 observe the voting process there. We were pleased with
12 how it went with the voter verifiable printers. I think
13 we learned some things, the counties learned some. And we
14 hope the state did as well, and look forward to bringing
15 that forward to California shortly so we can try to get
16 the printers available to our customers and to potential
17 new customers in the state as soon as we can.

18 Thank you.

19 CHAIRPERSON KYLE: Thank you, Mr. Charles.

20 As we look seriously at the future after
21 November 2nd and take into consideration all of the
22 problems and concerns that have been raised over the last
23 18 months regarding security, new technology, et cetera,
24 et cetera, that have been debated and discussed vigorously
25 here and among our staff and among local county election

1 officials and voting activists and concerned citizens as
2 we move forward to comply with new HAVA requirements, new
3 federal requirements, and as we further develop our
4 standards for appropriate technology and standards that
5 technology can be used for voting in the state of
6 California and hopefully throughout the rest of the
7 country, we're going to be doing a lot of reconsideration
8 of a lot of those systems, including the vendor systems
9 that exist in the counties now and that will exist in the
10 future.

11 And I understand the business problems that ensue
12 from some of that uncertainty. A clean way to do it would
13 be for the Panel to make a recommendation on November 3rd
14 to the Secretary of State to decertify every single system
15 in the state. And we could start from ground zero there.
16 But I don't think you're really advocating that.

17 So having said that, we could go forward with the
18 way it is and try to address it collectively as to how do
19 we make it work for the voters of California on a
20 go-forward basis going into 2005, given the realistic
21 constraints of the bidding processes for the counties, the
22 timelines they work under, and the need for moving forward
23 by all parties. And so that's, I think, the goal of our
24 office and working collectively with the county election
25 officials with voting advocates, the general public, with

1 the vendors.

2 PANEL MEMBER MILLER: Mr. Chairman, to simply
3 supplement what you just said, and I understand and dualy
4 note the concern about conditional certification that
5 Mr. Charles has raised, appropriate concerns.

6 On the other hand, decertification takes anywhere
7 from six months to a year to effectuate. And I don't want
8 to be put in a position of having to face this six-month
9 to one-year time frame for, indeed, reconsidering and
10 implementing certification procedures.

11 So, therefore, I think it does make sense to go
12 with the conditional certification route, rather than as
13 you suggest, Mr. Charles, just decertifying and using that
14 authority, which takes anywhere from six months to a year
15 to effectuate.

16 CHAIRPERSON KYLE: Jill Lavine.

17 MS. LAVINE: Jill Lavine, Registrar of Sacramento
18 County.

19 My concern is along the same lines. I'm applying
20 for the Prop. 41 funds now that I have acquired a
21 certified system. And from what I understand, unless I
22 can get that application in this next month, I will not
23 have a certified system. So I'm not sure how that plays
24 out with the funding of the Prop. 41. So where do I
25 stand? Will I get this money or not because of my

1 certification issue with ES&S? So that is a concern I
2 have and I hope someone can address that also. And I know
3 I'm not the only county in this boat, as we put it. So
4 any help on that, please.

5 PANEL MEMBER CARRELL: I actually have a question
6 while you're up here, and that is so I understand, so the
7 Panel understands the timing for the RFP process that a
8 county goes through in order to purchase the system. How
9 long was the RFP process conducted by Sacramento County
10 before you finally made an award to a vendor?

11 MS. LAVINE: This was our third RFP that we put
12 out for this last time go around. It took us
13 approximately two to three months to get the RFP together.
14 We put it out on April 1st. And we had the vendor demos
15 in May, and we awarded the contract in June. So it was
16 close to six months, and then we had negotiations. So
17 everything was not signed until closer to July.

18 BOARD MEMBER CARRELL: So for jurisdictions in
19 this state that may have November elections next year, the
20 sooner we evaluate these systems, or re-evaluate these
21 systems, the better. So that if they need to conduct RFP
22 processes to obtain Prop. 41 or funded programs or systems
23 for their HAVA funds, that we can get these decisions made
24 or the reviews made as soon as possible. And this -- I
25 guess I'm saying February or March so that a six-month

1 process can be expedited and they can have a system in
2 place.

3 MS. LAVINE: Yeah. And remembering that the
4 vendors can only go so many places at one time. Yes. I
5 mean, we were very lucky. Since this was our third RFP,
6 we basically had the blueprint ready to go. But working
7 with County Council and purchasing and everything else, it
8 takes a long time to get through the process.

9 PANEL MEMBER CARRELL: Thank you.

10 CHAIRPERSON KYLE: Michael Smith. We have to
11 subtract out what your wife said on your behalf.

12 MR. SMITH: That's fine. I'm Michael Smith,
13 Santa Cruz County, Peace and Freedom Party.

14 I'm sure she covered well the constraints that
15 are placed on the different election systems by the
16 freeze. And I take it, you know, that writing the
17 Governor is the appropriate method to try to unfreeze
18 these funds.

19 I don't know -- I didn't get in to see if she had
20 mentioned also that in Santa Cruz County, trying to comply
21 with the ADA requirements that the federal government is
22 mandating on certainly our county and I assume every other
23 county and not having that kind of funding now to comply,
24 we're caught between a rock and a hard place. Certainly,
25 in order to do those doable things, the funding would be

1 needed. There are some things that cannot be done because
2 the individual polling places themselves must build ramps,
3 must do certain things to comply with the federal
4 government.

5 So I would appeal to any groups, as well as to
6 the Board, or anyone else to take that stance towards the
7 Governor of unfreezing those funds. Because things that
8 were planned to be done for this November election may not
9 be done because of it. So I thank you for your attention.

10 CHAIRPERSON KYLE: Thank you, Mr. Smith.

11 Just for point of information. ADA compliance
12 and HAVA compliance are two separate things, though they
13 do overlap in terms of some of the requirements. Counties
14 have to comply with ADA and shouldn't be using HAVA funds
15 for their compliance with the ADA. So if there are ramps
16 missing, the counties need to do that. They need to get
17 it out of funds other than HAVA. Where they might
18 oversect, then the county, again, should be using separate
19 funds for ADA compliance.

20 Unless there are any more comments or questions
21 from the Panel, I'm going to entertain a motion to
22 adjourn.

23 PANEL MEMBER DANIELS-MEADE: So moved.

24 PANEL MEMBER CARRELL: Second.

25 CHAIRPERSON KYLE: All those in favor.

1 (Ayes)

2 CHAIRPERSON KYLE: The ayes have it.

3 Thank you, everyone.

4 (Thereupon the Voting Systems and Procedures

5 Panel meeting adjourned at 11:52 a.m.)

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1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing hearing was reported in shorthand by me,
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the
8 State of California, and thereafter transcribed into
9 typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said hearing nor in any
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 20th day of September, 2004.

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